

ID:02040mottodismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KATHRYN MARSHALL

CASE NO. C-1-02-189

VENA MARSHALL

Judge Herman Weber

Plaintiffs

Magistrate Judge Hogan

vs.

OHIO DEPARTMENT OF EDUCATION

NEW BOSTON PUBLIC SCHOOLS

LOWELL HOWARD

**DEFENDANTS' MOTION TO
COMPEL**

BERNARD TILLEY

MELINDA BURNSIDE

JERRY BENTLEY

LAURA WESSEL

PAT POTTER

Defendants

Now come defendants New Boston Public Schools, Lowell Howard, Bernard Tilley, Melinda Burnside, Jerry Bentley, Laura Wessel and Pat Potter, and move this Court to compel plaintiffs Vena and Kathryn Marshall to fully answer and respond to defendants' first set of

interrogatories and requests for production of documents. This motion is supported by the attached memorandum and the Affidavit of Bernard W. Wharton.

/s/ R. Gary Winters

R. Gary Winters 0018680
Bernard W. Wharton 0063487
Attorneys for Defendants
McCASLIN, IMBUS & McCASLIN
Suite 900 Provident Bank Building
632 Vine Street
Cincinnati, OH 45202-2442
(513) 421-4646 Telephone
(513) 421-7929 Facsimile
rgwinters@mimlaw.com
bwwharton@mimlaw.com

ID:02040MEMO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KATHRYN MARSHALL

CASE NO. C-1-02-189

VENA MARSHALL

Judge Herman Weber

Plaintiffs

Magistrate Judge Hogan

vs.

OHIO DEPARTMENT OF EDUCATION

NEW BOSTON PUBLIC SCHOOLS

LOWELL HOWARD

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL**

BERNARD TILLEY

MELINDA BURNSIDE

JERRY BENTLEY

LAURA WESSEL

PAT POTTER

Defendants

Defendants first sent their interrogatories and requests for production of documents to the plaintiffs' attorney on May 18, 2005. (See ¶ 2 of Affidavit of Bernard W. Wharton). On

June 20, 2005, counsel for defendants sent another letter to counsel for the plaintiffs inquiring as to when the plaintiffs would respond to these discovery requests. (See ¶ 3 of Affidavit of Bernard W. Wharton). On or around June 24, 2005, Sandra Marshall, then a plaintiff and now no longer a party, sent hand-written responses along with several documents directly to counsel for the defendants. (See ¶ 4 of Affidavit of Bernard W. Wharton).

Because these responses were not fully responsive to the discovery requests, counsel for defendants set a letter to counsel for plaintiffs on June 24, 2005 detailing problems with these responses. (See ¶ 5 of Affidavit of Bernard W. Wharton). In reviewing these hand-written responses, it became clear that there were numerous problems which needed to be addressed. One of the more pressing issues at this time is the fact that Sandra Marshall is no longer a plaintiff in this matter and there are no responses from the current plaintiffs, Vena Marshall and Kathryn Marshall. Defendants respectfully request that both plaintiff Vena Marshall and Kathryn Marshall answer the discovery requests propounded to them back in May, 2005. A second problem with the responses from plaintiffs is the fact that they have never been verified. Defendants respectfully requests that this Court ordered plaintiffs Vena Marshall and Kathryn Marshall to verify and discovery responses that they produce.

After pointing out numerous problems in the June 24, 2005 correspondence to plaintiffs' counsel, counsel for the defendants had no reply from the plaintiffs' counsel. Subsequent letters of July 20, 2005, August 25, 2005, September 19, 2005 and October 12, 2005 have not led to any satisfactory response from plaintiffs. (See ¶ 6 of Affidavit of Bernard W. Wharton).

Defendants respectfully request that this Court order plaintiffs Vena Marshall and

Kathryn Marshall to fully and accurately answer the first set of interrogatories and requests for production of documents propounded to them on May 18, 2005 and that the plaintiffs sign a verification sheet for any interrogatory answers they propound.

Respectfully submitted,

/s/ R. Gary Winters

R. Gary Winters 0018680

Bernard W. Wharton 0063487

Attorneys for Defendants

McCASLIN, IMBUS & McCASLIN

Suite 900 Provident Bank Building

632 Vine Street

Cincinnati, OH 45202-2442

(513) 421-4646 Telephone

(513) 421-7929 Facsimile

rgwinters@mimlaw.com

bwwharton@mimlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2005, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Gary Winters

R. Gary Winters 0018680

Bernard W. Wharton 0063487

McCASLIN, IMBUS & McCASLIN

Attorneys for Defendants

Suite 900 Provident Building

632 Vine Street

Cincinnati, OH 45202-2442

(513) 421-4646 Telephone

(513) 421-7929 Facsimile

rgwinters@mimlaw.com

bwwharton@mimlaw.com

